



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC-2012-0246]

RIN 3150-AJ20

**Consideration of Environmental Impacts of Temporary Storage of Spent Fuel
After Cessation of Reactor Operation**

AGENCY: Nuclear Regulatory Commission

ACTION: Request for comments on the notice of intent to prepare and environmental impact statement and notice of public meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is updating its Waste Confidence Decision and Rule. The NRC intends to prepare an Environmental Impact Statement (EIS) to support the rulemaking to update the Commission's Waste Confidence Decision and Rule, and is conducting a scoping process to gather information necessary to prepare the EIS. As part of the scoping process the NRC is planning to hold two public meetings on November 14, 2012, and two webinars on December 5 and 6, 2012.

DATES: Any interested party may submit comments on the scope of the Waste Confidence environmental review. The deadline to submit comments is January 2, 2013. The NRC staff is able to ensure consideration only for comments received on or before this date. There will be no extensions to this comment period; however, to the extent practical staff will consider comments received after January 2, 2013. Interested parties will be given additional

opportunities to comment on any draft EIS and proposed rule that are prepared as part of this effort.

ADDRESSES: Information and comment submissions related to this action, which the NRC possesses and are publicly available, may be accessed by searching on

<http://www.regulations.gov> under Docket ID NRC-2012-0246.

Comments may be submitted by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0246. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- **Fax comments to:** RADB at 301-492-3446

FOR FUTHER INFORMATION CONTACT: Ms. Sarah Lopas, NEPA Communications Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-492-3425; e-mail:

Sarah.Lopas@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2012-0246 when contacting the NRC about the availability of information related to the EIS and Waste Confidence Decision update and rule.

Information related to this action, which the NRC possesses and is publicly available, may be accessed by any of the following methods:

- **Federal Rulemaking Web site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2012-0246.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- **NRC's Public Web site:** Additional information regarding the Waste Confidence Decision and Rule and the EIS can be accessed online at the NRC's Web site: <http://www.nrc.gov/waste/spent-fuel-storage/wcd.html>. The web site will be periodically updated with information related to the EIS development and opportunities for public participation.

B. Submitting Comments

Comments submitted in writing or in electronic form will be posted on the Federal rulemaking Web site, <http://www.regulations.gov>. Please include Docket ID NRC-2012-0246 in the subject line of your comment submission. Because your comments will not be edited to

remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information; therefore, they should not include any information in their comments that they do not want publicly disclosed.

II. Background

The Waste Confidence Decision and Rule represent the Commission's generic determination that spent nuclear fuel can be stored safely and without significant environmental impacts for a period of time after the end of the licensed life of a nuclear power plant (in 1984 and 1990 the time period was 30 years after the end of the license, and in 2010 it was increased to 60 years). This generic analysis is reflected in section 51.23 of Title 10 of the *Code of Federal Regulations* (10 CFR), which is intended to satisfy the NRC's National Environmental Policy Act (NEPA) obligations with respect to post-licensed-life storage of spent nuclear fuel. Historically, the Waste Confidence Decision has consisted of five findings and a technical basis for each finding.

The Waste Confidence Decision and Rule were first adopted in 1984 in response to *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979). The Decision and Rule were amended in 1990, reviewed in 1999, and amended again in 2010. (SRM-SECY-09-0090; under ADAMS Accession No. ML102580229 and 75 FR 81037; December 23, 2010).

In response to the 2010 Decision and Rule, the States of New York, New Jersey, Connecticut, and Vermont, and several other parties challenged the Commission's NEPA analysis in the Decision, which provided the regulatory basis for the Rule. On June 8, 2012, the DC Circuit Court found that some aspects of the 2010 Decision did not satisfy the NRC's NEPA

obligations and vacated the Decision and Rule. (*New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)).

The Court concluded that the Waste Confidence Rulemaking is a major federal action necessitating either an EIS or an Environmental Assessment (EA) that results in a Finding of No Significant Impact. In vacating the 2010 decision and rule, the Court identified three specific deficiencies in the analysis:

1. Related to the Commission's conclusion that permanent disposal will be available "when necessary," the Court held that the Commission did not evaluate the environmental effects of failing to secure permanent disposal;
2. Related to the storage of spent fuel on site at nuclear plants for 60 years after the expiration of a plant's operating license, the Court concluded that the Commission failed to properly examine the risk of spent fuel pool leaks in a forward-looking fashion;
3. Also related to the post-licensed-life storage of spent fuel, the Court concluded that the Commission failed to properly examine the consequences of spent fuel pool fires.

Waste Confidence, though applicable only to the period after the licensed life of a reactor, is part of the basis for agency licensing decisions on new reactor licensing, reactor license renewal, and independent spent fuel storage installation licensing (see generally 10 CFR 51.23). The Commission has decided that no final licenses will be issued until a new Waste Confidence Decision and Rule are in effect. (CLI-12-016). The NRC is now preparing a revised Decision and Rule to address the issues identified by the Court. This *Federal Register* notice is the first step in that process.

In a rulemaking, the Commission must consider the effect of its actions on the environment in accordance with NEPA. Section 102(1) of NEPA requires that policies, regulations, and public laws of the United States be interpreted and administered in accordance

with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies consider environmental issues in their decision-making processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51, “Environmental protection regulations for domestic licensing and related regulatory functions.” To fulfill its responsibilities under NEPA, the NRC is preparing an EIS to support the potential update to the Waste Confidence Decision and Rule.

The Commission’s regulations in 10 CFR 51.26, “Requirement to publish notice of intent and conduct scoping process,” contain requirements for conducting a scoping process prior to preparation of an EIS, including preparation of a notice of intent in the *Federal Register* regarding the EIS and indication that the scoping process may include holding a public scoping meeting.

III. Scoping Process for Environmental Impact Statement

The purposes of this notice are: 1) to inform the public that the NRC staff will be preparing an EIS as part of revising the Waste Confidence Decision and Rule and 2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. This step is the first opportunity for stakeholder participation in the Waste Confidence Decision and rule update following the June 2012 remand, and it occurs before the NRC has determined results or recommendations for the update. Additional opportunities for public participation will occur during the public comment period for the draft EIS, the revised Waste Confidence Decision, and the proposed Rule. Notices of these public participation opportunities will be published in the *Federal Register*.

The NRC intends to gather the information necessary to prepare an EIS to evaluate the environmental impacts of the storage of spent nuclear fuel after cessation of reactor operations. This EIS will form the technical basis for the revision of the Waste Confidence Decision and

Rule. Possible scenarios to be analyzed in the EIS include temporary spent fuel storage after cessation of reactor operation until a repository is made available in either the middle of the century or at the end of the century, and storage of spent fuel if no repository is made available by the end of the century. The affected environment may include a set of general characteristics and associated ranges to bound the environmental analysis of spent fuel storage throughout the United States. It is important to note that the environmental analysis in the EIS and the update of the Waste Confidence Decision and rule are generic activities. The EIS and update of the Decision and rule are therefore not the appropriate forums to consider site-specific issues or concerns.

The NRC will first conduct a scoping process for the EIS and thereafter will prepare a draft EIS and draft Waste Confidence Decision and proposed Rule for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

- a. Define the proposed action that is to be the subject of the EIS;
- b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth, including potential spent fuel storage scenarios for evaluation, such as availability of a delayed permanent repository towards the end of the century;
- c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant. Also note that analysis of environmental impacts for this effort would be principally intended to provide input to decision-making for updating the Waste Confidence Decision and Rule and would not involve analysis of site-specific issues;
- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

- e. Identify other environmental review and consultation requirements related to the proposed action;
- f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;
- g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies. No cooperating agencies are involved at this time;
- h. Describe how the EIS will be prepared, including any contractor assistance to be used. The NRC will prepare a draft EIS in accordance with its regulations in 10 CFR Part 51. The NRC is obtaining contractor assistance in preparation of the EIS; and
- i. Obtain public input on potential locations for future public meetings on the draft EIS.

The NRC invites the following entities to participate in the scoping process:

- a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards,
- b. Any affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards,
- c. Any affected Indian tribe, and
- d. Any person who requests or has requested an opportunity to participate in the scoping process.

IV. Notice of Public Webcast Meetings and Webinars

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff has elected to hold

two identical public scoping meetings on November 14, 2012, at NRC's headquarters, One White Flint North, First Floor Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland 20852. Both meetings will be web-streamed via the NRC's Web site. See the NRC's Live Meeting Webcast page to participate: <http://www.nrc.gov/public-involve/public-meetings/webcast-live.html>. The first meeting will convene at 1:00 p.m. EST and will continue until approximately 4:00 p.m. EST, with in-person attendance from members of the public welcome. The second meeting will be a webstream-only meeting held later in the evening to better accommodate stakeholders in Western time zones. The webstream-only meeting will convene at 9:00 p.m. EST (6:00 p.m. PST) and will continue until approximately 12:00 a.m. EST (9:00 p.m. PST). The late evening webstream-only meeting will not be open to the public for in-person attendance. Therefore, persons wishing to attend a scoping meeting in-person at the NRC's headquarters must attend the 1:00 p.m. meeting.

Additionally, in early December, the NRC will be hosting two public scoping webinars. The first webinar will take place on December 5, 2012, from 1:00 p.m. EST through 4:00 p.m. EST. The second webinar will take place on December 6, 2012, from 9:00 p.m. EST (6:00 p.m. PST) through 12:00 a.m. EST (9:00 p.m. PST).

All meetings and webinars will be transcribed and will include the following: (1) an overview by the NRC staff of the environmental review process, the proposed scope of the EIS to support the Waste Confidence Decision and Rule update, and the proposed review schedule; and (2) an opportunity for interested government agencies, organizations, and individuals to submit comments on the environmental issues or the proposed scope of the EIS. All meetings and webinars will have a moderated teleconference phone line so that remote attendees will have the opportunity to voice their comments. In addition to a moderated phone line, webinars will also feature a real-time instant messaging tool that will allow participants to type their questions and comments and send them to the NRC during the webinar.

To be considered, comments must be provided either during the transcribed public meetings and webinars (in person, over the phone, or via the webinar instant messaging tool) or in writing, as discussed above.

To register for and request to present oral comments at the November 14 meetings, whether in-person or over the phone, please contact Ms. Susan Wittick or Ms. TR Rowe at 1-800-368-5642, extensions 3187 or 3133, respectively. You may also register for and request to present comments at these meetings via e-mail to WCOutreach@nrc.gov. To attend the 1:00 p.m. at the NRC's headquarters meeting in-person, please provide your full name as it appears on a government-issued photo ID, which you must present upon entering the NRC facility. Directions and parking information will be sent to you upon registration. While pre-registration for the November 14 meetings is encouraged, members of the public may also register to speak just prior to the start of each meeting.

Public meeting notices for the November 14 meetings and the December 5 and 6 webinars will be posted on the NRC's public meeting Web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm> approximately 2 weeks before each meeting date. The meeting notices will contain additional information, including agendas, teleconference phone line details, and information on how to access and participate in the webinars. This information will also be provided on the NRC's Waste Confidence public Web site: <http://www.nrc.gov/waste/spent-fuel-storage/wcd.html>.

During all meetings and webinars, individual oral comments may be limited by the time available, depending on the number of persons who register to speak. Members of the public

who have not registered may also have an opportunity to speak, if time permits. If special equipment or accessibility modifications (e.g., sign language interpreters, large print, oral interpreters) are needed to attend or present information at the afternoon meeting on November 14 at the NRC's headquarters, such requests should be brought to Ms. Wittick's or Ms. Rowe's attention no later than November 7, 2012, so that the NRC staff can determine whether the request can be accommodated.

At the conclusion of the scoping process, the NRC will prepare a summary of the determinations and conclusions reached on the scope of the environmental review, including the significant issues identified, and will make this summary publicly available. The staff will then prepare and issue for comment the draft EIS, and update to the Waste Confidence Decision, and proposed Rule, which will be the subject of separate *Federal Register* notices and a series of public meetings at different locations throughout the country. After receipt and consideration of comments on the EIS and proposed Rule, the NRC will prepare a final EIS and rule, which will also be available to the public.

Dated at Rockville, Maryland, this 19th day of October, 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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